IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2879 of 2007

to

FIRST APPEAL No. 2889 of 2007

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT THRO' THE SECRETARY & 2 - Appellant(s)
Versus
MAGANBHAI KHODABHAI & Ors.- Respondent(s)

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Appearance :
MS KRINA P.CALLA, AGP for Appellant(s) : 1 - 3.
MR APURVA KAPADIA for Respondent(s)-Claimant(s)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/06/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.Apurva Kapadia, learned counsel, waives service of notice on behalf of the claimant/claimants in each Appeal. Having regard to the facts of the case, the Appeals are heard today.

2. These Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated March 31, 2006, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.189/2002 to 199/2002, by which, the claimants have been awarded additional amount of compensation at the rate of Rs.134.60 ps. per sq.mt. for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.9.90

ps. per sq.mt. by his award dated August 1, 2000.

3. The Executive Engineer, Narmada Project, Division No.7, Gandhinagar, proposed to the State Government to acquire the agricultural lands of village Chekhla, Taluka: Sanand, District: Ahmedabad, for the public purpose of construction of a canal under the Narmada Project. On perusal of the same, the State Government was satisfied that the lands of village Chekhla mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued which was published in the official gazette on August 25, 1998. The owners of the lands were thereafter served with notices as required by Section 4 of the Act. The proposed acquisition was opposed by them. After making necessary inquiry, the Special Land Acquisition Officer forwarded his report to the State Government, as contemplated by

Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Chekhla mentioned in the notification published under Section 4 of the Act were needed for the public purpose of construction of a canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was also published in the official gazette. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.300/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated August 1, 2000, offered compensation to the claimants at the rate of Rs.9.90 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they

submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R) where they were registered as Land Acquisition Case Nos.189/2002 to 199/2002.

4. On behalf of the claimants, witness Shantilal Vadilal Patel was examined at Ex.33. After giving particulars of the lands acquired, the witness mentioned that the lands acquired were irrigated lands and highly fertile. In support of this assertion, the witness produced 7/12 Extracts relating to the lands acquired at Exs.16 to 27. The witness also mentioned that water was available in ample for irrigation purposes because there were 16 tube-wells as well as 15 to 20 Wells and pond in his village. According to this

witness, each claimant was able to raise crops of Paddy, Millet, Juwar, Cotton, Wheat, Lemon, etc. What was mentioned by the witness was that each claimant was able to earn the net income of Rs.45,000/- per Vigha per year from the sale of agricultural produces. The witness further mentioned before the Court that all the facilities such as school, primary school, private and Government dispensaries, bus, telephone, etc. were available in his village. The witness asserted before the Court that the boundaries of village Godhavi were touching the boundaries of his village and that from village Godhavi also, lands were acquired for the public purpose of Dholka Branch Canal under the Narmada Project. It was further asserted by the said witness that the lands of his village Chekhla were better in quality than the lands of village Godhavi, and therefore, the claimants were entitled to compensation on the basis of the previous award of the Reference Court

relating to the lands of village Godhavi. The witness produced the previous award of the Reference Court relating to the lands of village Godhavi at Ex.28. The witness further stated before the Court that the judgment and award rendered by the Reference Court relating to the lands of village Godhavi was subject matter of challenge in First Appeal No.712 of 2000 and produced certified copy of the judgment of the High Court at Ex.29. The witness also stated that the judgment delivered by the High Court was challenged before the Supreme Court and produced a copy of the order passed by the Supreme Court at Ex.30.

Though this witness was cross-examined by the learned counsels for the acquiring authorities, nothing substantial could be elicited nor the assertion made by him that the lands of his village Chekhla were better in quality than the lands of village Godhavi could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Kirtikumar Jayantilal Sola was examined at Ex.46. From his testimony, it is evident that at the relevant time, he was discharging duties as Deputy Executive Engineer in Narmada Nigam. In his examination-in-chief, the witness admitted that the lands acquired were irrigated lands and that crops such as Cotton, Juwar, Paddy, etc. were being raised thereon. In his cross-examination, the witness mentioned that at the time when the lands in question were acquired, he was not discharging duties as Deputy Executive Engineer and had no personal knowledge relating to the acquisition proceedings initiated for acquiring the lands in this case. The witness, in on uncertain terms, admitted that the boundaries of village Godhavi and village Chekhla were adjoining each other.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the

opinion that the previous award of the Reference Court relating to the lands of village Godhavi, as modified by the High Court, was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired from village Chekhla. The Reference Court noticed that for acquiring the lands of village Godhavi, notification under Section 4(1) of the Act was published in the official gazette on September 19, 1991, whereas in the instant case, notification under Section 4(1) of the Act was published in the official gazette on August 25, 1998, and therefore, the claimants would be entitled to reasonable rise in price of lands as indicated in Special Land Acquisition Officer, Bharuch v. Motibhai Mohanbhai reported in 1997(2) GLH 773. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.134.60 ps. per sq.mt. by the impugned

award giving rise to the abovenumbered Appeals.

7. This Court has heard Ms.Krina P.Calla, learned Assistant Government Pleader for the appellants and Mr.Apuva Kapadia, learned counsel for the claimant/ claimants in each Appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is true that the claimants could not make good their assertion that each claimant was able to earn the net income of Rs.45,000/- per Vigha per year from the sale of agricultural produces. However, the said fact pales into insignificance as enhanced compensation was never claimed on yield basis nor enhanced compensation was claimed on the basis of comparable sale instances. What was relied upon by the claimants was

the previous award of the Reference Court relating to the lands of village Godhavi which was produced at Ex.28. A perusal of Ex.28 indicates that pursuant to proposal made by the Executive Engineer, Narmada Project, Dholka Branch Canal, Division 3/2, Gandhinagar, the lands of village Godhavi were acquired pursuant to publication of notification under Section 4(1) of the Act in the Government Gazette on September 19, 1991. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.2.50 ps. per sq.mt. by his award dated September 2, 1994. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (R) at Mirzapur, Ahmedabad, where they were registered as Land Acquisition Case Nos.170/1996 to 177/1996. In those cases, on behalf of the claimants, witness Raghubhai Tanubhai Vaghela was examined at Ex.30 whereas on behalf of the acquiring

authorities, Dilipkumar Kantilal Shah was examined at Ex.45. After appreciating the evidence adduced by the parties, the Reference Court, by common judgment and award dated April 16, 1999, awarded additional amount of compensation to the claimants at the rate of Rs.87/- per sq.mt. for their acquired lands. Exhibit 29, which is the judgment of the High Court delivered in First Appeal No.712 of 2000 and cognate matters, indicates that the abovementioned award of the Reference Court relating to the lands of village Godhavi was challenged before the High Court and the Division Bench of the High Court, by judgment dated August 18, 2000, reduced the amount of compensation payable to the claimants to Rs.85/- per sq.mt. The record further shows that the judgment of the High Court was challenged before the Supreme Court in Special Leave to Appeal (Civil) CC6604-6668 /2001 and the Supreme Court dismissed the Special Leave Petitions by order dated September 28, 2001.

It is well-settled principle of law that the previous award of the Reference court relating to the lands of a village can be relied upon as a good guidance for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. The relevance of the previous award of the Reference court relating to the lands of village Godhavi is well established by the claimants through their witness. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court, as modified by the High Court, for the purpose of determining the market value of the lands acquired from village Chekhla. It may be mentioned that the lands of village Godhavi were acquired pursuant to publication of notification under Section 4(1) of the Act in the official gazette on September 19, 1991, whereas in the instant case, notification

under Section 4(1) of the Act was published in the official gazette on August 25, 1998. The price of the lands never remain static and go on increasing day-by-day. Under the circumstances, the Reference Court was justified in granting benefit of rise in price of lands at the rate of 10% p.a. while calculating the market value of the lands acquired from village Chekhla on the basis of the previous award of the Reference court relating to the lands of village Godhavi. The calculation of the amount payable to the claimants as compensation on the basis of the previous award of the Reference Court relating to village Godhavi is not in dispute before this Court. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that evidence led has been correctly appreciated after which just conclusions have been arrived at to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade the

Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. Therefore, this Court does not find any merits in any of the Appeals. Therefore, the Appeals which lack merit deserve to be dismissed.

9. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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